

## Federal Maritime Commission

## § 560.3

national-flag or other vessels which results in failure to provide reasonable competitive access to cargoes by U.S. flag vessels.

(c) Use of predatory practices, possibly including but not limited to the use of a vessel or vessels in a particular trade for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of that trade, and closed conferences employing deferred rebates, which unduly impair access of a U.S. flag vessel to the trade.

(d) Any government or commercial practice that results in, or may result in, unequal and unfair opportunity for U.S. flag vessel access to port or intermodal facilities or services related to the carriage of cargo inland to or from ports in the trade.

(e) Any other practice which unduly impairs access of a U.S. flag vessel to trade between foreign ports.

[49 FR 45406, Nov. 15, 1984. Redesignated and amended at 64 FR 8009, 8010, Feb. 18, 1999]

### § 560.3 Petitions for relief.

(a) *Filing.* (1) Any owner or operator of a liner, bulk, tramp or other vessel documented under the laws of the United States who believes that its access to ocean trade between foreign ports has been, or will be, unduly impaired may file a written petition for relief under the provisions of this part.

(2) An original and fifteen copies of such a petition including any supporting documents shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a \$241 filing fee.

(b) *Contents.* Petitions for relief shall include the following and shall also include an affidavit attesting to the truth and accuracy of the information submitted:

(1) The name and address of the petitioner;

(2) The name and address of each party (foreign government, agency or instrumentality thereof, carrier, or other person) against whom the petition is made and a statement as to whether the party is a foreign government, agency or instrumentality thereof;

(3) A concise description and citation of the foreign law, rule or government or commercial practice complained of;

(4) A certified copy of any law, rule, regulation or other document concerned, when available and, if not in English, a certified English translation thereof;

(5) Any other information relating to any law, rule or regulation, or indicating the existence of any government or commercial practice;

(6) A description of the service offered or proposed, as a result of which petitioner is alleging harm, including information which indicates the ability of the petitioner to otherwise participate in the trade;

(7) A clear description, in detail, of the harm already caused, or which may reasonably be expected to be caused, to the petitioner for a representative period, including:

(i) Statistics documenting present or prospective cargo loss due to discriminatory government or commercial practices if harm is alleged on that basis; such statistics shall include figures for the total cargo carried or projected to be carried by petitioner in the trade for the period, and the sources of the statistics;

(ii) Information documenting how the petitioner is being prevented from entering a trade, if injury is claimed on that basis;

(iii) Statistics or other information documenting the impact of discriminatory government or commercial practices resulting in an increase in costs, service restrictions, or other harm on the basis of which injury is claimed, and the sources of the statistics; and

(iv) A statement as to why the period is representative.

(8) A separate memorandum of law or a discussion of the relevant legal issues.

(9) A recommended action, rule or regulation, the result of which will, in the view of the petitioner, address the alleged conditions unduly impairing the access of petitioner to the affected trade.

(c) *Deficient petition.* A petition which substantially fails to comply with the requirements of paragraph (b) of this section shall be rejected and the person filing the petition shall be notified of

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the reasons for such rejection. Rejection is without prejudice to filing of an amended petition.

[49 FR 45406, Nov. 15, 1984, as amended at 63 FR 50537, Sept. 22, 1998; 67 FR 39862, June 11, 2002; 70 FR 10331, Mar. 3, 2005]

#### § 560.4 Proceeding.

(a) Upon the Commission's own motion or upon the filing of a petition which meets the requirements of § 560.3, when there are indications that conditions unduly impairing the access of a U.S. flag vessel to trade between foreign ports may exist, the Commission will institute a proceeding pursuant to this part.

(b)(1) Notice of the institution of any such proceeding will be published in the FEDERAL REGISTER, and that notice and petition, if any, will be served on the parties.

(2) Interested or adversely affected persons will be allowed a period of time to reply to the petition by the submission of written data, views or legal arguments pursuant to § 560.5 of this part. Factual submissions shall be in affidavit form.

(3) An original and 15 copies of such submissions will be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573.

(c) Following the close of the initial response period, the Commission may issue a decision or order further hearings if warranted. If further hearings are ordered, they will be conducted pursuant to procedures to be outlined by the Commission in its order.

[49 FR 45406, Nov. 15, 1984, Redesignated at 64 FR 8009, Feb. 18, 1999, and amended at 67 FR 39862, June 11, 2002]

#### § 560.5 Receipt of relevant information.

(a) In making its decision on matters arising under section 13(b)(6) of the Act, the Commission may receive and consider relevant information from any owner, operator, or conference in an affected trade, or from any foreign government, either directly or through the Department of State or from any other reliable source. All such submissions should be supported by affidavits of fact and memorandum of law. Relevant information may include, but is not limited to:

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(1) Statistics, with sources, or, if unavailable, the best estimates pertaining to:

(i) The total cargo carried in the affected liner or bulk trade by type, source, value, tonnage and direction.

(ii) Cargo carried in the affected trade on vessels owned or operated by any person or conference, by type, source, value, tonnage and direction.

(iii) The percentage such cargo carried is of the total affected liner or bulk trade, on a tonnage and value basis.

(iv) The amount of cargo reserved by a foreign government for national-flag or other vessels in the affected trade, on a tonnage and value basis, and a listing of the types of cargo and specific commodities which are reserved for national-flag or other vessels.

(2) Information on the operations of vessels of any party serving the affected trade, including sailings to and from ports in the trade, taxes or other charges paid to foreign authorities, and subsidies or other payments received from foreign authorities.

(3) Information clarifying the meaning of the foreign law, rule, regulation or practice complained of, and a description of its implementation.

(4) Complete copies of all conference and other agreements, including amendments and related documents, which apply in the trade.

(b) Once introduced or adduced, information of the character described in paragraph (a) of this section, and petitions and responses thereto, shall be made part of the record for decision and may provide the basis for Commission findings of fact and conclusions of law, and for the imposition of sanctions under the Act and this part.

[49 FR 45406, Nov. 15, 1984, Redesignated and amended at 64 FR 8009, 8010, Feb. 18, 1999]

#### § 560.6 Notification to Secretary of State.

When there are indications that conditions unduly impairing the access of a U.S. flag vessel to trade between foreign ports may exist, the Commission shall so notify the Secretary of State and may request that the Secretary of State seek resolution of the matter through diplomatic channels. If request is made, the Commission will give